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PRESIDING OFFICER'S  
RULING NO. C99-1/20

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Complaint on Post E.C.S.

Docket No. C99-1

PRESIDING OFFICER'S RULING ON  
COMPLAINANT'S OUTSTANDING MOTIONS  
TO COMPEL RESPONSES TO DISCOVERY REQUESTS  
DIRECTED TO UNITED STATES POSTAL SERVICE

(Issued March 16, 2001)

This ruling deals with two pending motions of Complainant United Parcel Service to compel the Postal Service to produce responses to a variety of discovery requests concerning Post E.C.S. service.<sup>1</sup> In Presiding Officer's Ruling No. 19,<sup>2</sup> one of the motions was granted in part with respect to two of the interrogatories at issue. Additionally, notwithstanding the Postal Service's initial objection to all these interrogatories, it subsequently volunteered answers to some of them.<sup>3</sup> Accordingly, one of the pending motions is moot as to the interrogatories that have been answered. The remaining interrogatories in controversy are addressed below.

UPS/USPS-47(f). UPS/USPS-47 poses a series of questions requesting the Postal Service to confirm that the USPS server computer used for sending or retrieving Post E.C.S. messages of different described origins and destinations is physically located in the United States. Subpart (f) further asks whether the Postal Service is able to identify Post E.C.S. messages from senders with e-mail addresses that do not contain a foreign top level domain (TLD) name to recipients whose e-mail addresses

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<sup>1</sup> Motion of United Parcel Service to Compel United States Postal Service to Answer Interrogatories UPS/USPS-46(a) and UPS/USPS-47 through UPS/USPS-49, August 9, 1999; Motion of United Parcel Service to Compel Answers to Interrogatories UPS/USPS-50, 52-54, and 57-58, September 9, 1999.

<sup>2</sup> Presiding Officer's Ruling No. C99-1/19, November 29, 2000.

<sup>3</sup> The Service answered Interrogatories UPS/USPS-46(a), 47(a)-(e) and 49 in a set of responses filed on August 20, 1999.

also do not contain a foreign top level domain name, and if so, to state the number of such transactions and the proportion of all Post E.C.S. transactions they represent. Although the Postal Service initially objected to the interrogatory in its entirety, it ultimately answered all questions posed except the request in subpart (f).

The Service maintains its objection to responding to this subpart on the ground that doing so would be unduly burdensome, requiring 21 person-days of computer programmer's time. According to the Service, requiring this effort would be "manifestly unreasonable" because the results would yield absolutely no information that would shed light on Post E.C.S.'s "international" character. Postal Service Answer in Opposition at 6. The Service asserts that separating e-mail traffic into messages associated with foreign and all other top level domains would not yield the proportion of "international" and "domestic" Post E.C.S. transactions, as this is not how Internet addressing and traffic actually work. Specifically, the Service argues that such a separation would be premised on artificial assumptions that e-mail traffic associated with generic top level domains (gTLDs) such as ".com," ".org," and ".net" necessarily is domestic, and that messages associated with an e-mail address containing a "foreign" country code (ccTLDs) necessarily are international. *Id.* at 3-6. In an attachment to its Answer, the Service proffers publicly available information provided by Network Solutions, Inc. and the Internet Corporation for Assigned Names and Numbers (ICANN) to support its arguments.

While conceding that a Post E.C.S. message's association with a foreign top level domain may not be the most significant fact in determining its domestic or international character, UPS claims that its inquiry is relevant in combination with the other subparts of the interrogatory. If all Post E.C.S. messages, whether to an address containing a foreign top level domain or not, reside on a server located in the United States, UPS claims that all such transaction would be wholly domestic. However, if messages sent to a foreign top level domain must be routed to a server in the custody of a foreign postal administration, UPS concedes that such transactions may arguably be considered "international." In light of the question's potential bearing on the

Service's jurisdictional arguments, UPS asserts that it is reasonably calculated to lead to the discovery of admissible evidence. UPS Motion to Compel at 2-3.

UPS also observes that the undue burden objection justifies an assumption that the Service can perform the requested separation of transactions. It also expresses doubt that performance of the task would require 21 person days in the case of Post E.C.S. service, inasmuch as it offers an "Electronic Postmark" feature that records the time and date of the Service's receipt of an electronic document as well as validating its existence. However, even if the Service's estimate is valid, UPS argues that it is not excessive in light of the importance of the jurisdictional issue at stake. *Id.* at 3-4.

I shall grant Complainant's motion to compel a response to this question. As UPS has argued, inquiring into the extent to which Post E.C.S. transactions consist of international and domestic traffic is directly relevant to a jurisdictional issue currently before the Commission.<sup>4</sup> While the analysis requested by UPS arguably may not yield the best evidence on this point, it nevertheless may lead to the production of admissible evidence—if, for example, it comes to light that there is no Post E.C.S. traffic involving e-mail addresses associated with foreign top level domains. Moreover, absent some form of actual tally of Post E.C.S. transactions, the only evidence on the jurisdictional issue is likely to be the Postal Service's general statement in response to a question posed by the Commission that "it is known that transactions are originated and directed to recipients within the U.S."<sup>5</sup>

For these reasons, I find that the relevance of the inquiry outweighs the burden identified by the Postal Service. However, I also find it appropriate to allow the Service to perform the requested analysis in a way that will preserve its position on the significance of the information at issue. Therefore, in performing its examination of Post E.C.S. traffic, the Service may identify and report any of the transactions it believes to

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<sup>4</sup> See Order No. 1258, August 6, 1999, at 4-6.

<sup>5</sup> Partial Response of United States Postal Service to Commission Order No. 1229, March 3, 1999.

be international in character, provided that it specifies the grounds for its opinion. This will enable the Service to respond to whatever use Complainant may seek to make of the requested information without having to perform a second iteration of the analysis.

UPS/USPS-48. This interrogatory asks the Postal Service whether any of the equipment or other resources used to provide Post E.C.S. service are also used with Mailing Online and Post Office Online, and if so, to identify all such shared common inputs. The Service objected to responding on the grounds of relevance and, in part, commercial sensitivity. UPS argues that the requested information bears on the issue of whether Post E.C.S. is a “postal” service because the use of common inputs may imply some degree of similarity between the services, which may in turn support an inference that they are of the same basic “postal” nature. UPS also challenges the Service’s argument that identifying the inputs shared by two services would cause commercial harm by giving competitors indications of the capacity of the Service’s resources, and for this reason asserts that the claim of commercial sensitivity is frivolous. Motion to Compel at 4-5.

The Postal Service responds that its objection should be sustained on the ground of relevance alone, citing one of the determinations in Presiding Officer’s Ruling No. C99-1/9. Postal Service Answer in Opposition at 6-7. In that ruling, I denied Complainant’s motion to compel responses to questions asking whether resources such as computer equipment, programmers, and telephone lines used in connection with the Post E.C.S. service are used for providing any other service, finding that:

[T]he information sought in these interrogatories would be of minimal relevance to the issue to be addressed in this phase of the proceeding...The sharing of common resources with other services would only shed indirect light on the intrinsic feature of Post E.C.S.

Ruling No. C99-1/9, August 9, 1999, at 3.

I agree with the Postal Service that the same considerations apply in this instance. While the commonality of resources used in providing Post E.C.S. and other services might bear on the potential for cross-subsidy in pricing—and thus potentially

may be appropriate for inquiry at a later stage of the proceeding—such information would only enable comparisons of Post E.C.S. with other services, rather than revealing its intrinsic character. Therefore, I shall deny the motion of UPS on this interrogatory, but without prejudice to its possible use in discovery in a later phase of this case.

UPS/USPS-52, 54, and 58. These interrogatories resemble UPS/USPS-47(f), discussed above, in that they ask the Postal Service to disaggregate Post E.C.S. transactions to date according to the e-mail addresses of senders and addressees, compile the results, and report them in various ways. UPS/USPS-52 asks whether there have been any transactions involving a sender with an e-mail address containing a top level domain name of .com, .org, .net, or .edu to a recipient with an e-mail address containing any of the same categories of domain name, and if so to report what proportion of all Post E.C.S. transactions they represent. UPS/USPS-54 asks the Service to state the proportion of transactions between users who do not have a foreign top level domain name associated with their e-mail addresses and addressees who have e-mail addresses of the same description.<sup>6</sup> UPS/USPS-58 asks the Service to provide the proportion of transactions where the sender had an e-mail address containing a top level domain of .com, .org, .net, or .edu in its domain name and the message was left for the recipient to retrieve: (a) on a server located in the United States, and (b) on a server located outside the United States.

The Postal Service objected to all these requests on the grounds of relevance and burden. Additionally, the Service objected to UPS/USPS-54 on the ground of vagueness, and to UPS/USPS-58 on the grounds of commercial sensitivity and lack of jurisdiction, to the extent it seeks information about Post E.C.S. transactions initiated by users other than those licensed by USPS.

In its Motion to Compel, UPS argues that the requested information is relevant to the issue of establishing the domestic or international character of Post E.C.S., and cites one finding in Ruling No. C99-1/9 to support its position. Motion to Compel at 3.

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<sup>6</sup> The information requested in this question is identical to one of the two categories of information sought by the second question posed in UPS/USPS-47(f), treated earlier in this ruling.

UPS also claims that the Service's objection to UPS/USPS-54 based on vagueness is without merit, as it has already defined the term "foreign top level domain." *Id.* at 2. On the subject of burden, UPS asserts that the Service should be able to devise a program to facilitate automated searches of sender or recipient e-mail addresses. However, even if the Service cannot do so, UPS asserts that the required effort is not undue, given the importance of the jurisdictional issue before the Commission. *Id.* at 3. Finally, UPS attempts to blunt the Service's objections to UPS/USPS-58 on the grounds of commercial sensitivity and jurisdiction by stating that it has no desire to obtain information about Post E.C.S. transactions involving foreign postal authorities. *Id.* at 4.

In its Answer, the Postal Service acknowledges the efforts of UPS to cure vagueness and alleviate commercial sensitivity concerns in its motion to compel, but asserts that they fall short of overcoming its objections on the grounds of relevance and burden. The Service cites its earlier pleadings as demonstrating that the UPS interrogatories proceed from a fallacious assumption—*i.e.*, that top level domains associated with e-mail addresses can be used to segregate Post E.C.S. transactions into "foreign" and "domestic" categories. Because the premise underlying the interrogatories is incorrect, the Service argues, they lack a factual foundation, and will not lead to the production of information regarding the respective origins and points of receipt of Post E.C.S. transactions. *Id.* at 4-5.

In addition to irrelevance, the Service claims that responding to the three interrogatories would impose an inordinate burden, requiring a minimum of six full person weeks of effort by computer programmers, a knowledgeable data base administrator, and a qualified engineer. According to the Service, the production of such irrelevant information would be unjustified in view of the burden involved. *Id.* at 5.

Because the information sought UPS/USPS-54 is substantively identical to one of the two types of information requested in UPS/USPS-47(f), treated above, there is no need to consider this interrogatory separately.<sup>7</sup> In responding to the latter, as directed in this ruling, the Postal Service will include the answer to this interrogatory as well.

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<sup>7</sup> The Postal Service does not claim that UPS/USPS-52, -54, or -58 are cumulative.

I shall also grant Complainant's motion to compel responses to the other two interrogatories, with an exception. In requesting information about Post E.C.S. transactions directed between e-mail addresses associated with generic top level domains, UPS/USPS-52 can fairly be viewed as complementary to the inquiry in UPS/USPS-47(f). While transactions associated with non-foreign top level domains may or may not be coextensive with transactions associated with general top level domains, information in both categories may bear on the degree to which there are Post E.C.S. transactions that are "domestic" rather than "international" in character, which has been identified as a significant jurisdictional issue in this stage of the case. Consequently, I conclude that this interrogatory may lead to the production of admissible evidence.

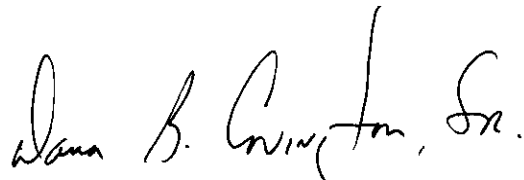
Similarly, in asking for transactions of similar origin that come to reside on computer servers physically located within the United States, UPS/USPS-58(a) requests information that may lead to identification of the segment of Post E.C.S. traffic that constitute end-to-end domestic transactions, and thus is a relevant inquiry. However, UPS/USPS-58(b) asks the Postal Service to identify and report transactions that reside on equipment outside the U.S. that is owned or controlled by foreign postal administrations. Although this question complements the inquiry in UPS/USPS-58(a), I agree with the Postal Service that it is inappropriate to require it to investigate and vouch for a tally of messages in the custody of other countries' postal services. Therefore, I shall deny the motion with respect to UPS/USPS-58(b).

Responding to UPS/USPS-47(f) will require the Postal Service to review server logs or other records of Post E.C.S. electronic transactions to identify and cumulate those between e-mail addresses associated with non-foreign top level domains. While this task may be laborious in itself, it would appear feasible to perform it together with the analyses requested in UPS/USPS-52 and -58 in the same iteration. For this reason, it appears that the burden of performing these additional analyses would not be unduly great.

As with the compelled response to UPS/USPS-47(f), because of the effort required and in the interest of economical development of the record on this issue, the Postal Service may identify and report any transactions among those examined in performing these additional analyses that it believes to be international in character, provided that the bases for its interpretation are specified.

### RULING

1. The Motion of United Parcel Service to Compel United States Postal Service to Answer Interrogatories UPS/USPS-46(a) and UPS/USPS-47 through UPS/USPS-49, August 9, 1999, is granted as provided in the body of this ruling with respect to UPS/USPS-47(f), denied as to UPS/USPS-48, and dismissed as moot with respect to the remaining interrogatories.
2. The Motion of United Parcel Service to Compel United States Postal Service to Answer Interrogatories UPS/USPS-52, -54, and -58, filed September 9, 1999, is granted as provided in the body of this ruling with respect to UPS/USPS-52, -54, and 58(a), and denied as to UPS/USPS-58(b).

A handwritten signature in black ink, reading "Dana B. Covington, Sr." in a cursive script.

Dana B. Covington, Sr.  
Presiding Officer